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The Potential for Enforcement of the United Nations Convention on the Rights of the Child: The Need to Improve the Information Base

INTRODUCTION

The odds a child must overcome to reach adulthood in the modern world are staggering. Over 50 million children work in unsafe or unsanitary conditions.¹ One hundred twenty million children between six and eleven years old have no formal education.² Curable or preventable diseases claim the lives of three and a half million children annually.³ One hundred fifty five million children under the age of five in developing countries live in absolute poverty.⁴ In developed nations, children's lives can also be difficult. Millions of children are abused, neglected, and exploited.⁵

Faced with these facts, an international movement to improve

¹ CENTRE FOR HUMAN RIGHTS, UNITED NATIONS, HUMAN RIGHTS FACT SHEET NO. 10, THE RIGHTS OF THE CHILD 2 (1991) [hereinafter THE RIGHTS OF THE CHILD].

² *Id.*

³ *Id.* In 1990, more than 38,000 children died daily from lack of food, shelter, or health care. More than 80 million children in the world were homeless. Howard Davidson, *The New United Nations Convention on the Rights of the Child*, 11 CHILDREN'S LEGAL RTS. J. 8, 9 (1990); see also S. Res. 70, 103d Cong., 1st Sess. (1993) (stating that "millions of children worldwide are threatened daily by poverty, malnutrition, homelessness, exploitation, and abuse"). Several countries currently recruit or forcibly conscript children between the ages of 8 and 15 into the military. Davidson, *supra*, at 9.

⁴ THE RIGHTS OF THE CHILD, *supra* note 1, at 2.

⁵ *Id.* In the United States, children are now the poorest age group. In 1991, reports claimed that 2.6 million children were abused or neglected. H.R. Con. Res. 15, 103d Cong., 1st Sess. (1993). Between 1980 and 1988, the federal government decreased its spending on education by 12 percent. One quarter of U.S. high school students do not graduate. Michael Jupp, *The UN Convention on the Rights of the Child: An Opportunity for Advocates*, 12 HUM. RTS. Q. 130, 132 (1990); see also H.R. Con. Res. 15 ("approximately 40 percent of [U.S.] children are at risk of school failure"). "In the most prosperous nation of all . . . child deprivation has increased even as wealth has risen and poverty among other age groups has fallen." Warren Gerard, *Millions of Children in Peril*, TORONTO STAR, Dec. 24, 1991, at A13. The United States ranks 19th worldwide in infant mortality, 17th in its immunization of children, and below 15th with regard to children's general health and well-being. H.R. Con. Res. 15.

children's bleak living conditions has gained momentum.⁶ The movement culminated with the United Nations General Assembly's adoption of the Convention on the Rights of the Child (Child Convention or Convention) on November 20, 1989.⁷ The Child Convention entered into force within a year of its approval, and received an unprecedented number of ratifications from the international community.⁸

The Child Convention creates a definitive body of law that protects children's economic, social, cultural, civil, and political rights.⁹

⁶ Thomas Hammarberg, *The UN Convention on the Rights of the Child—and How to Make It Work*, 12 HUM. RTS. Q. 97, 98–99 (1990); THE RIGHTS OF THE CHILD, *supra* note 1, at 2, 3; see also Cynthia P. Cohen, *Introductory Note to United Nations: Convention on the Rights of the Child*, 28 I.L.M. 1448, 1448–49 (1989). During the 1979 International Year of the Child, Poland introduced a draft convention advocating special legal protection to children's rights. THE RIGHTS OF THE CHILD, *supra* note 1, at 3. Over the past sixty years, eighty international legal documents concerning the special status of children have evolved. Davidson, *supra* note 3, at 8. In particular, the Draft Convention on the Rights of the Child relied upon the Declaration of Geneva and the 1959 Declaration of the Rights of the Child, which recognized that children are entitled to special care and protection. Cohen, *supra*, at 1448; see Declaration on the Rights of the Child, G.A. Res. 1386 (XIV), U.N. Doc. A/4354 (1959). The Convention goes further than the 1959 Declaration by making states parties legally accountable. THE RIGHTS OF THE CHILD, *supra* note 1, at 3. The Convention did not gain support quickly, because at first there seemed to be no pressing need for it, nor was there a general consensus on the issue. Thomas A. Johnson, Remarks, *United Nations Convention on the Rights of the Child*, in AMERICAN SOC'Y INT'L LAW, PROCEEDINGS OF THE 83RD ANNUAL MEETING, 155, 168 (1989). As the U.N. Convention on the Rights of the Child Working Group expanded the original Polish model to include more civil and political rights, however, and as nongovernmental organizations (NGOs) added their input, the Convention adopted a form upon which many states could agree. See Cohen, *supra*, at 1449.

⁷ Convention on the Rights of the Child, G.A. Res. 44/25, *opened for signature* Jan. 26, 1990, 28 I.L.M. 1448, 1456 (1989), with an addendum in 29 I.L.M. 1340 (entered into force Sept. 2, 1990) [hereinafter Child Convention]. The General Assembly adopted the Child Convention without a vote. Cohen, *supra* note 6, at 1448.

⁸ Marta Santos Pais, *The Committee on the Rights of the Child*, 47 INT'L COMM'N JURISTS REV. 36, 37 (1991). As of January 13, 1993, 127 countries had ratified the Child Convention, and 27 had merely signed it. *Children: Clinton Aide Assures "High Priority" for U.N. Treaty*, 1993 Inter Press Service, Jan. 13, 1993, available in LEXIS, Nexis Library, Intl File [hereinafter *High Priority*]. Although the United States is the only developed country which has not yet ratified the Child Convention, the prospects that the Clinton Administration will ratify the Child Convention appear favorable. *Id.*; see S. Res. 70; H.R. Con. Res. 15. One week before President Clinton's inauguration, then-Secretary of State-designate Warren Christopher told a Senate confirmation hearing that the Clinton Administration would place "very high priority" on the Child Convention, which "needs to be one of the very next ones" signed and ratified. *High Priority, supra*.

⁹ Cohen, *supra* note 6, at 1448; Hammarberg, *supra* note 6, at 99. Unlike other human rights instruments, the Child Convention does not differentiate between the importance of civil or political rights and economic, social, or cultural rights. Donna Gomien, *Whose Right (and Whose Duty) Is It? An Analysis of the Substance and Implementation of the Convention on the Rights of the Child*, 7 N.Y.L. SCH. J. HUM. RTS. 161, 174 (1989).

It enumerates certain substantive rights, along with implementation provisions.¹⁰ The Child Convention also establishes the Committee on the Rights of the Child (CRC) to monitor the compliance of states parties with the Convention.¹¹

The Child Convention follows the typical model of earlier human rights documents. For example, the Child Convention incorporates many of the rights and procedures found in the International Covenant on Economic, Social and Cultural Rights (Economic Covenant or Covenant).¹² In addition, the CRC, the monitoring body under the Child Convention, closely resembles the Committee on Economic, Social and Cultural Rights (CESCR), which monitors compliance with the Economic Covenant.¹³

This Note examines and evaluates the CRC in its supervisory capacity. Part I of this Note discusses the rights guaranteed in the Child Convention. Part II gives a brief history of the Economic Covenant, including an explanation of the role of the CESCR in monitoring states parties' compliance with the Covenant. Part II also examines reasons why the CESCR may not serve as the best model for the new CRC. Part III explores the development of the Child Convention thus far and describes innovations the CRC undertook at its first official meeting in October, 1991. Part IV analyzes the potential effectiveness of the CRC in monitoring compliance with the Child Convention and suggests that the CRC focus on improving the information base upon which it relies. This Note concludes that the CRC may achieve a higher degree of success than the CESCR if it continues to undertake measures that encourage and monitor compliance. The Child Convention could become the trend-setter in the human rights arena if the attitude of international cooperation which has prevailed thus far continues.

I. THE CONVENTION ON THE RIGHTS OF THE CHILD

The Child Convention is the most recent product of the international drive for legal recognition of children's rights. Following ratification by twenty U.N. member countries, the Child Convention

¹⁰ Child Convention, *supra* note 7, arts. 4, 6–40.

¹¹ *Id.* art. 43.

¹² See International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI), *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter Economic Covenant].

¹³ John T. Holmes, *The Convention on the Rights of the Child: A Canadian Perspective*, in PROCEEDINGS OF THE 83RD ANNUAL MEETING, *supra* note 6, at 176.

entered into force on September 2, 1990.¹⁴ For those states who ratify it after this date, the Child Convention takes effect on the thirtieth day following the deposit of their instrument with the Secretary-General.¹⁵

A. *Substantive Rights Under the Child Convention*

The Child Convention consists of fifty-four articles, forty-one of which explicitly define children's substantive rights under international law. Under the Child Convention, states parties agree to insure that children enjoy the right to life,¹⁶ to a standard of living adequate for the child's physical, mental, spiritual, moral, and social development,¹⁷ to health care,¹⁸ to a name and nationality,¹⁹ and to family relations.²⁰ States parties also recognize a child's right to an education,²¹ to leisure and cultural activities,²² and to special protection

¹⁴ *Election of the Ten Members of the Committee on the Rights of the Child in Accordance with Article 43 of the Convention, Note by the Secretary-General*, United Nations Convention on the Rights of the Child, 1st mtg., Agenda Item 2, at 1, U.N. Doc CRC/SP/2 (1991).

¹⁵ Child Convention, *supra* note 7, art. 49(2).

¹⁶ *Id.* art. 6; *see infra* notes 34–47 and accompanying text. Inclusion in the Child Convention of a child's right to life does not include an opinion about the right to an abortion. Cohen, *supra* note 6, at 1450. The drafters did not discuss the abortion issue *per se* because the Convention focuses on the rights of children, born or unborn, not on the rights of mothers to decide whether to bear a child. *Id.* Rights of unborn children could include the right to prenatal care and to protection from fetal experimentation. *Id.*

¹⁷ Child Convention, *supra* note 7, art. 27.

¹⁸ *Id.* art. 24. The right to health care recognized in the Child Convention is the most specific guarantee on the subject in international law. Sanford J. Fox & Diony Young, *International Protection of Children's Right to Health: The Medical Screening of Newborns*, 11 B.C. THIRD WORLD L.J. 1, 42–43 (1991). The drafting process did not define clearly the meaning of the provision, however, nor did it establish who was to interpret the meaning of the right to health. It is even unclear whether the CRC would be able to arrive at a meaning of the right to health to apply to particular situations. *Id.*; *see also* Holmes, *supra* note 13, at 176 (stating that there are no acceptable criteria to evaluate adequate standards of living or health).

¹⁹ Child Convention, *supra* note 7, art. 8. Many believe that registration of a child's name and nationality is a basic necessity for the overall protection of the child. ANNA M. PAPPAS, *LAW AND THE STATUS OF THE CHILD* xlv (1983).

²⁰ Child Convention, *supra* note 7, art. 7. The Child Convention repeatedly refers to undefined concepts, such as "inherent rights," "privacy," "freedom," and "best interests of the child." Even the term "family members" does not have a clear definition. It appears unclear, then, how states parties will define the rights expressed in such ambiguous language. *See* Sanford N. Katz, *Afterword to CHILDREN'S RIGHTS IN AMERICA* 335, 337 (Cynthia P. Cohen et al. eds., 1990); Walter H. Bennett, Jr., *A Critique of the Emerging Convention on the Rights of the Child*, 20 CORNELL INT'L L.J. 1, 36–37 (1987).

²¹ Child Convention, *supra* note 7, arts. 28, 29.

²² *Id.* art. 31.

during war.²³ The Child Convention protects a child's right to be heard by judicial or administrative fora²⁴ and advocates publicity for the Child Convention so that children are aware of these and other rights.²⁵

The Child Convention spells out certain rights that appear as general principles in other human rights instruments, and applies these rights specifically to children.²⁶ In addition, the Child Convention includes some rights never before protected in human rights treaties. For instance, the Child Convention guarantees to children the right to an "identity"²⁷ and to freedom from sexual and other types of exploitation.²⁸

The Child Convention manifests several basic policy positions with regard to the rights of children. The first is that children need special legal protection beyond that afforded adults.²⁹ Second, a caring family environment is most conducive to a child's survival and development.³⁰ Finally, the Child Convention repeatedly affirms that adults should act in the child's best interests.³¹

²³ See *id.* art. 38.

²⁴ *Id.* art. 12; see also Pais, *supra* note 8, at 42 (stating that article 12 "sets a completely new philosophy in the consideration of children's rights, underlining the value of the participation of the child in the decision-making process affecting him or her.").

²⁵ Child Convention, *supra* note 7, art. 42.

²⁶ Joan Fitzpatrick, Remarks, *United Nations Convention of the Rights of the Child*, in PROCEEDINGS OF THE 83RD ANNUAL MEETING, *supra* note 6, at 155. For example, the Child Convention clarified issues such as the relationship between the child, the family, and the state; juvenile justice standards; and the child's right to privacy. Cohen, *supra* note 6, at 1450. With the Child Convention, the United Nations has attempted to "touch upon all the rights belonging to one particular group and define a state's obligations towards that group." *The Convention on the Rights of the Child: Time for a New Look at Implementation*, 37 INT'L COMM'N JURISTS REV. 30, 32 (1986).

²⁷ See Child Convention, *supra* note 7, art. 8. Argentina proposed that the right of a child to an identity be included in the Convention to protect those children who "disappear," as happened during a repressive period in Argentina's history. Cohen, *supra* note 6, at 1451. The "identity" provision is quite general and was not controversial during the drafting process. Daniel P. Skoler, *Anti-Discrimination and Identity Rights of the Child*, in CHILDREN'S RIGHTS IN AMERICA, *supra* note 20, at 109, 123. Under article 8 of the Child Convention, elements of a child's "identity" include a nationality, name, and family. See Child Convention, *supra* note 7, art. 8.

²⁸ See Child Convention, *supra* note 7, art. 39. The Child Convention contains a unique provision for "appropriate measures to promote physical and psychological recovery and social reintegration" of child victims of sexual and other exploitation, trafficking, torture, and armed conflict. Cynthia P. Cohen, Remarks, *United Nations Convention on the Rights of the Child*, in PROCEEDINGS OF THE 83RD ANNUAL MEETING, *supra* note 6, at 162, 165.

²⁹ Professor Lung-chu Chen, *Toward Adoption of the United Nations Convention on the Rights of the Child: A Policy-Oriented Overview*, in PROCEEDINGS OF THE 83RD ANNUAL MEETING, *supra* note 6, at 157, 160.

³⁰ *Id.*

³¹ *Id.*; Pais, *supra* note 8, at 42; see also *supra* note 20.

1. "Hot Topics" Under the Child Convention

Because of differences in culture and political philosophy, drafting an international statement of children's rights was a complicated and lengthy process. Two of the more sensitive points of contention that arose during the drafting stage of the Child Convention involved determining when childhood begins and how old individuals must be before taking part in armed conflicts.³² The compromises that resulted from disputes during the drafting period attest to the spirit of cooperation that characterized the process.³³

During the drafting stage, there was considerable debate concerning the time at which childhood begins. Three positions emerged.³⁴ Ireland, the Vatican, and Latin American countries defined childhood as beginning from the moment of conception.³⁵ On the other hand, the original Polish draft Convention, along with Eastern European countries, took the position that childhood begins from the moment of birth.³⁶ The United States posited that childhood begins at the moment of viability.³⁷

Ultimately, the drafters arrived at a compromise upon which all signatory states could agree. The issue of a child's right to life arises in three provisions of the Child Convention—in the ninth paragraph of the Child Convention's preamble,³⁸ in article 1,³⁹ and in article 6.⁴⁰ Only the preamble suggests that the Child Convention might apply to the fetus. In the preamble, the drafters incorporated in quotation marks the statement from the 1959 Declaration on the Rights of the Child which provides that children deserve protection

³² Cohen, *supra* note 6, at 1450.

³³ See Pais, *supra* note 8, at 36.

³⁴ Johnson, *supra* note 6, at 179.

³⁵ *Id.*

³⁶ *Id.* The Eastern European countries favored this position because it does not conflict with a woman's ability to have an abortion, a very common method of birth control in Eastern Europe. *Id.*

³⁷ *Id.*

³⁸ The ninth preambular paragraph states: "*Bearing in mind* that, as indicated in the Declaration of the Rights of the Child, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.'" Child Convention, *supra* note 7, at pmbl.

³⁹ Article 1 provides: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." *Id.* art. 1.

⁴⁰ Article 6 provides, in part: "States Parties recognize that every child has the inherent right to life." *Id.* art. 6.

"before as well as after birth."⁴¹ Although this appears on its face to have been a victory for states parties who wished to see the Convention take a pro-life stance, the preamble does not create binding legal duties on states parties.⁴² In addition, the paragraph begins with the rather weak phrase "bearing in mind," rather than with stronger words such as "reaffirming" or "recalling."⁴³ Moreover, the final report of the Child Convention's Working Group stated that the preambular paragraph was not to affect how states parties interpreted article 1 or any other provision of the Child Convention.⁴⁴ Thus, article 1 currently allows each state to decide for itself when childhood begins.⁴⁵ Article 6 then maintains that the child has an inherent right to life, but does not rule out the possibility that a state party may deem that childhood begins at birth, rather than earlier.⁴⁶ The compromises made during the debates about when childhood begins, which can be interpreted to affect abortion rights, permitted states parties with differing viewpoints to agree on the same document. Each state party will interpret the Child Convention in accord with its own position, however.⁴⁷

During the drafting process, there was also considerable debate about the minimum age for participation in hostilities. Article 38 of the Child Convention provides that the minimum age to take direct

⁴¹ See *supra* note 38.

⁴² Philip Alston, *The Unborn Child and Abortion under the Draft Convention on the Rights of the Child*, 12 HUM. RTS. Q. 156, 171-72 (1990).

⁴³ See Holmes, *supra* note 13, at 180; see also Russel L. Barsh, *The Convention on the Rights of the Child: A Re-Assessment of the Final Text*, 7 N.Y.L. SCH. J. HUM. RTS. 142, 155-56 (1989).

⁴⁴ Holmes, *supra* note 13, at 180.

⁴⁵ Cohen, *supra* note 28, at 179.

⁴⁶ See Child Convention, *supra* note 7, art. 6.

⁴⁷ Holmes, *supra* note 13, at 180. For example, Argentina made a declaration regarding article 1 of the Child Convention that it will interpret the word "child" as including every human being from the moment of conception to the age of eighteen. *Status of the Convention on the Rights of the Child*, United Nations Treaty Section, 191, 192-93, U.N. Doc. LA 41 TR/221/1 (1991) [hereinafter *Convention Status*]. Ecuador will also interpret the Child Convention as protecting the unborn child and cites the ninth preambular paragraph of the draft Convention with approval. *Id.* Guatemala and the Holy See also made declarations discussing the Covenant's protection of human life from conception. *Id.* On the other hand, France has stated that the Child Convention would not be an obstacle to legislation on the voluntary interruption of pregnancy in that country. *Id.* In the United Kingdom, the Child Convention applies only following a live birth. U.N. Doc. ST/LEG/SERE/9 (Supp.) at 21. During the first session of the CRC in October 1991, the members declined to discuss the rights of the child before birth, noting that states parties did not assume any obligations in that regard under the Convention. *Summary Record of the 11th Meeting*, Committee on the Rights of the Child, 1st sess., at 6, U.N. Doc. CRC/C/1991/SR.11 (1992).

part in armed combat is fifteen.⁴⁸ For many critics, this provision is disappointing in two respects.⁴⁹ First, the Child Convention says nothing about children participating *indirectly* in armed conflicts.⁵⁰ In addition, many viewed the Child Convention as an opportunity to raise the minimum age for recruitment into military service from fifteen to eighteen years of age.⁵¹ The United States, however, argued that procedurally, the Working Group was not the proper forum in which to modify international human rights law.⁵² The U.S. stance prevented a consensus.⁵³

Despite the inadequacy of article 38, states parties will be able to set higher ages for military service if they desire. For instance, Argentina's ratification was accompanied by a statement that it would have liked the Child Convention to prohibit completely the use of children in combat.⁵⁴ Under the "safeguard clause" of article 41,⁵⁵ Argentina will continue to apply its own domestic law.⁵⁶ The

⁴⁸ Article 38 provides:

...

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priorities to those who are oldest. . . .

Child Convention, *supra* note 7, art. 38(3).

⁴⁹ Hammarberg, *supra* note 6, at 101. Not only did the drafters fail to advance the rights of children in this article, they may have taken a step backwards. *See id.*

⁵⁰ *See* Child Convention, *supra* note 7, art. 38.

⁵¹ Cynthia P. Cohen, *The Role of Nongovernmental Organizations in the Drafting of the Convention on the Rights of the Child*, 12 HUM. RTS. Q. 137, 142 (1990). Individual members of the Nongovernmental Organization Group (NGO Group) undertook special lobbying efforts. *Id.*

⁵² Cohen, *supra* note 6, at 1451 (citing *Report of the Working Group on a draft Convention on the Rights of the Child*, Commission on Human Rights, 45th Sess., Agenda Item 604, at 112, U.N. Doc. E/CN.4/1989/48 (1989)).

⁵³ *Id.*; Hammarberg, *supra* note 6, at 101.

⁵⁴ *Convention Status*, *supra* note 47, at 192.

⁵⁵ Article 41 states: "Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in: (a) The law of a State Party; or (b) International law in force for that State." Child Convention, *supra* note 7, art. 41.

⁵⁶ *Convention Status*, *supra* note 47, at 192. Colombia, while appreciating the difficulty in negotiating among different legal and political systems, also prefers that the military age be 18, and not 15, as in article 38. *Id.* at 192-93. In reservations and declarations, Spain and Uruguay have manifested their displeasure with the minimum age for military involvement being fifteen instead of eighteen. *Id.* at 194-95.

CRC might have the chance to debate this issue again if a state party proposes a correcting amendment.⁵⁷

2. Criticisms of the Child Convention

Some critics argue that the Child Convention scales back on the protections found in other human rights instruments.⁵⁸ For instance, the Child Convention contains several clauses that are similar to, but not exactly the same as, provisions in the Economic Covenant. These language differences may result in lower standards of protection.⁵⁹

Proponents of the Child Convention respond that the repetition of rights in a single document can only strengthen the special status of children.⁶⁰ The Child Convention is legally binding upon the states which ratify it.⁶¹ If international support of the Child Convention is strong enough, the Convention may become a rule of customary international law, or "a guide to interpreting law even in those countries that do not ratify it."⁶²

Nongovernmental organizations (NGOs) and U.N. bodies pushed

⁵⁷ See Child Convention, *supra* note 7, art. 50.

⁵⁸ Barsh, *supra* note 43, at 146-47; Gomien, *supra* note 9, at 173.

⁵⁹ Compare Economic Covenant, *supra* note 12, art. 10 with Child Convention, *supra* note 7, art. 18 (assistance to families); Economic Covenant, *supra* note 12, art. 13 with Child Convention, *supra* note 7, art. 28 (education). As examples of lower standards of protection, article 10 of the Economic Covenant gives the "widest possible protection and assistance" to families, while article 18 of the Child Convention refers only to "appropriate assistance." Furthermore, under article 13 of the Economic Covenant, all education should be free, but under article 28 of the Child Convention, education should be free only up until the secondary school level. Barsh, *supra* note 43, at 150-51 (citing Child Convention, *supra* note 7, arts. 18, 28; Economic Covenant, *supra* note 12, arts. 10, 13). One critic has noted that the Child Convention needs to state expressly how the various human rights instruments fit together, and how the protections in those documents relate to children. Failure to do so could cause confusion in the area of children's rights and a perception that children's rights have been weakened. Bennett, *supra* note 20, at 44-45.

⁶⁰ See David A. Balton, *The Convention on the Rights of the Child: Prospects for International Enforcement*, 12 HUM. RTS. Q. 120, 122 (1990). Proponents argue that the Child Convention complements and reinforces, rather than deprives or dilutes, protection already guaranteed children under international law. Chen, *supra* note 29, at 162. Even if the Child Convention fails to mention rights included in other human rights instruments, duplication of such rights would be. *Id.* at 161. The Child Convention takes account of rights guaranteed under other important human rights documents in article 41, which provides that the Convention does not affect international law in effect within a state. Child Convention, *supra* note 7, art. 41; Chen, *supra* note 29, at 161-62.

⁶¹ THE RIGHTS OF THE CHILD, *supra* note 1, at 3.

⁶² Cynthia P. Cohen & Per Miljeteig-Olsen, *Status Report: United Nations Convention on the Rights of the Child*, 8 J. HUM. RTS. 367, 377 (1991); Jupp, *supra* note 5, at 135.

for completion of the Child Convention in time for the thirtieth anniversary of the 1959 Declaration on the Rights of the Child.⁶³ The rush for completion may explain imperfections in the Child Convention.⁶⁴ Critics claim that the Child Convention excludes certain important substantive rights.⁶⁵ Furthermore, the drafters' haste led to inadequate discussion of certain innovations, such as the idea of an International Ombudsman on the Rights of the Child.⁶⁶

Children's Ombudsmen already exist in Sweden and Norway.⁶⁷ In Sweden, an ombudsman's function is to represent children's interests.⁶⁸ Children's Ombudsmen watch over the rights of children.⁶⁹ They educate people about children's needs and suggest and initiate action to ameliorate the conditions under which children live.⁷⁰ Their role is supportive and persuasive, yet they do exert pressure on authorities to improve children's living conditions.⁷¹ Under the Swedish version, the Ombudsman serves as a general "clearing-

⁶³ Cohen, *supra* note 6, at 1448.

⁶⁴ *Id.* at 1452. On the other hand, proponents of the Child Convention claim "Target 1989" did have some positive aspects, in that it added incentive to produce results. For instance, an extra drafting week during 1988 and a two-day pre-session discussion led by the United Nations Children's Fund (UNICEF) to identify potential controversies heightened the efficiency and productivity of the process. *Id.* at 1448-49.

⁶⁵ *Id.* at 1451. The Convention failed to include protection against "double jeopardy." It also failed to include protection for alien children and victims of forced internal migration, as well as protection against medical experimentation. *Id.*

⁶⁶ *Id.* at 1452. "Target 1989" did not allow time for serious discussion of the concept of an International Ombudsman or national monitoring committees. *Id.* Inclusion of an International Ombudsman could have greatly enhanced the Child Convention. See *infra* notes 174-180 and accompanying text.

⁶⁷ Per Miljeteig-Olssen, *Advocacy of Children's Rights—The Convention as More than a Legal Document*, 12 HUM. RTS. Q. 148, 153 (1990); RÄDDA BARNEN, THE OMBUDSMAN AND CHILD MALTREATMENT 24, 29 (1980). In the United States, the guardian *ad litem* performs a function similar to that of the Children's Ombudsman, serving as a representative to children in proceedings where children's or parent's rights are at stake. Paula A. Monopoli, *Using the Legislative Process to Improve the Legal Representation of Children*, in LAWYERS FOR CHILDREN 76, 77-78 (American Bar Ass'n ed., 1990). The guardian *ad litem* deals with individual cases, collects testimony, summons witnesses, and weighs factors as the child would if his or her judgment were mature. Shari F. Shink, *Reflections on Ethical Considerations*, in LAWYERS FOR CHILDREN, *supra*, at 43, 53-54. The guardian *ad litem* recommends to the court actions which are in the child's best interests. Monopoli, *supra*, at 79 n.7.

⁶⁸ RÄDDA BARNEN, *supra* note 67, at 25.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* A Children's Ombudsman has three courses of action in exerting pressure to help children. First, the Ombudsman negotiates with the entity directly concerned in a particular case. If negotiations are unsuccessful, he then takes the problem to a higher authority. Finally, if the response to the Ombudsman's actions is unsatisfactory, he may initiate a press campaign. *Id.* at 27.

house" for information related to children and their living conditions.⁷² Likewise, under the Norwegian model, the Ombudsman (known as barneombud)

provides a voice for children's interests and acts as a watchdog to ensure that those interests are protected . . . [and] serves as a representative for children in policymaking and a guardian in policy implementation. The barneombud is not directly involved in making policy decisions but instead aims to ensure that children are able to enter the political arena and that, when they do, they compete on a level playing field. . . .⁷³

Under both the Swedish and Norwegian models, Ombudsmen play an essential role in furthering a child's right to be heard, consistent with article 12 of the Child Convention.

B. *Implementation of the Child Convention*

To implement the Child Convention and to safeguard the rights of children internationally, the Child Convention established the CRC.⁷⁴ Pursuant to article 43, the CRC examines the progress made by states parties in fulfilling the obligations under the Child Convention.⁷⁵ The drafters of the Child Convention modeled the CRC after other U.N. human rights monitoring bodies, such as the CESCR, the entity that monitors compliance with the Economic Covenant.⁷⁶

The CESCR has been effective only to a limited extent, and the CRC is expected to encounter similar problems.⁷⁷ Although the CRC

⁷² *Id.* at 35; see Miljeteig-Olsen, *supra* note 67, at 154.

⁷³ Gary B. Melton, *Lessons from Norway: the Children's Ombudsman as a Voice for Children*, 23 CASE W. RES. J. INT'L L. 197, 202-03 (1991).

⁷⁴ Child Convention, *supra* note 7, art. 43(1). Although the CRC relies principally upon the Child Convention, members of the CRC agree that the Child Convention cannot be applied or interpreted in isolation. The CRC must take account of other international instruments when monitoring implementation of the Child Convention. *Summary Record of the 14th Meeting*, Committee on the Rights of the Child, 1st sess., at 9, U.N. Doc. CRC/C/1991/SR.14 (1992) [hereinafter *14th Meeting*].

⁷⁵ Child Convention, *supra* note 7, art. 43(1).

⁷⁶ Holmes, *supra* note 13, at 176. The drafters were unwilling to depart from models that had had some measure of success in the past due to the time pressure caused by "Target 1989," and perhaps also to facilitate ratification of the Child Convention. See Cohen, *supra* note 6, at 1452. The CRC is "part of the general framework of the international legal system" whose role is to encourage dialogue between states parties. *14th Meeting*, *supra* note 74, at 2.

⁷⁷ Holmes, *supra* note 13, at 176. This could include the CESCR's slow progress and lack of interest in drawing "broad conclusions of general utility and applicability from the experience." See Philip Alston & Bruno Simma, *Second Session of the UN Committee on Economic, Social and Cultural Rights*, 82 AM. J. INT'L L. 603, 605, 607-08 (1988).

has implemented several innovations not present in the structure of the CESCER, it is unclear whether the CRC can be a more effective monitoring and enforcement body than the CESCER. An analysis of this question must begin with an examination of the CESCER.

II. THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Economic Covenant, which entered into force on January 3, 1976,⁷⁸ guarantees certain social, cultural, and economic rights.⁷⁹ As of March 31, 1991, ninety-nine states parties had ratified or acceded to it.⁸⁰ A number of states have declined to ratify the Economic Covenant because of some of the substantive rights that it contains.⁸¹

A. *The CESCER and the Cooperation Model*

The drafters of the Economic Covenant recognized that even after states parties ratified the Covenant, adequate procedural protections were necessary to ensure that each state party made serious efforts to extend economic, social, and cultural rights to everyone.⁸² The Economic Covenant entrusts the responsibility for monitoring com-

⁷⁸ *States Parties to the International Covenant on Economic, Social and Cultural Rights and Status of the Submission of Reports in Accordance with the Programme Established by the Economic and Social Council in Resolutions 1988 (LX) and Rule 58 of the Rules of Procedure of the Committee, Note by the Secretary-General*, Committee on Economic, Social and Cultural Rights, 5th Sess., Agenda Item 1, at 1, U.N. Doc. E/C.12/1990/7 (1990) [hereinafter *Rule 58*].

⁷⁹ Under the Economic Covenant, states parties agree to take measures, individually and through international cooperation, to protect certain human rights. Economic Covenant, *supra* note 12, art. 2; *UN Committee on Economic, Social and Cultural Rights*, 42 INT'L COMM'N JURISTS REV. 33, 33 (1989). Each state party recognizes the right of individuals to work, to carry out their work under favorable conditions, to form trade unions, to receive social security, as well as the right to adequate living standards, including the right to housing, food, clothing, health, and education. Economic Covenant, *supra* note 12, arts. 6-13. The Economic Covenant also devotes an article to the protection of the family. *Id.* art. 10. States parties to the Economic Covenant recognize that people can achieve freedom from fear and from need only if they may enjoy their economic, social, and cultural rights, as well as civil and political rights. *Id.* at pmbl. Thus, the General Assembly adopted the International Covenant on Civil and Political Rights concurrently with the Economic Covenant. See International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

⁸⁰ *The Human Rights Covenants: tools in the "struggle of enforcement;" A Look Back . . . 25 Years Ago*, 28 U.N. CHRON. 68 (1991), available in LEXIS, World Library, Allwld File.

⁸¹ For example, some Western nations view economic, social, and cultural rights not as rights at all but merely as "good social policy." Cohen, *supra* note 6, at 1449; see also Cohen & Miljeteig-Olssen, *supra* note 62, at 379-80.

⁸² See United Nations Centre for Human Rights, *Manual on Human Rights Reporting Under Six Major International Human Rights Instruments* at iii, U.N. Doc. HR/PUB/91/1, U.N. Sales No. E.91.XIV.1 (1991) [hereinafter *Manual*].

pliance to the Economic and Social Council (ECOSOC).⁸³ ECOSOC in turn delegates much of its responsibility to the CESC.⁸⁴

The Economic Covenant relies upon a system of periodic reporting to measure signatory states' compliance.⁸⁵ Under the reporting system, states parties submit reports on measures they have taken to fulfill their commitments under the Covenant.⁸⁶ At its annual sessions, the CESC reviews states parties' reports and submits general suggestions and recommendations to ECOSOC regarding states parties' compliance with the Economic Covenant.⁸⁷

At the CESC's annual meetings, a state party's representative presents its report and answers questions regarding measures the state has taken to conform to standards set by the Economic Covenant.⁸⁸ The overall atmosphere at these sessions has been cooperative, rather than adversarial.⁸⁹ The CESC does not seek to coerce or intimidate states parties into complying with the Economic Cove-

⁸³ See Economic Covenant, *supra* note 12, art. 16.

⁸⁴ The CESC is actually an "expert body" of ECOSOC. The text of the Economic Covenant does not provide a role for the CESC, and in fact "the existence of the [CESC] is as precarious as a shifting vote within ECOSOC—as easily as it was created, it could be dissolved." Scott Leckie, *An Overview and Appraisal of the Fifth Session of the UN Committee on Economic, Social and Cultural Rights*, 13 HUM. RTS. Q. 545, 546 (1991).

⁸⁵ *Manual*, *supra* note 82, at iii. The periodic reporting system is the predominant method of monitoring compliance with human rights treaties. See Barsh, *supra* note 43, at 152. Critics view the system as unduly burdensome, expensive, and administratively difficult to apply. See Philip Alston, *Out of the Abyss: The Challenges Confronting the New U.N. Committee on Economic, Social and Cultural Rights*, 9 HUM. RTS. Q. 332, 332 (1987).

⁸⁶ *Manual*, *supra* note 82, at iii; Alston & Simma, *supra* note 77, at 609 (citing Economic Covenant, *supra* note 12, arts. 16(1), 17(2)).

⁸⁷ Symposium, *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, 9 HUM. RTS. Q. 122, 133 (1987) [hereinafter *Limburg Principles*]; *Rules of Procedure of the Committee*, Committee on Economic, Social and Cultural Rights, 4th Sess., Rule 61, at 14, U.N. Doc. E/C.12/1990/4 (1989) [hereinafter *Rules*].

⁸⁸ *Rules*, *supra* note 87, at Rule 62(1). The CESC requires states parties to submit an initial report within two years after ratifying the Economic Covenant, and every five years thereafter. Alston & Simma, *supra* note 77, at 610; see also *Rule 58*, *supra* note 78, at 5.

Between 1987 and 1991, the CESC examined 45 states parties' reports. The CESC attempted to facilitate the submission of reports and avoid the need to supplement reports with additional information through the use of reporting guidelines, general comments, and general discussions on rights in the Economic Covenant. Leckie, *supra* note 84, at 547. In order to facilitate the process of presenting reports, the CESC established pre-sessional working groups and imposed certain time limits for presentation of reports. Alston & Simma, *supra* note 77, at 611, 612. In addition, the Chairperson can ask states parties to submit additional information prior to the review of their reports if the reports fail to address previously raised issues or omit information required by the guidelines. *Id.* at 611–12. In fact, during its fifth session in 1990, the CESC asked five of the six reporting states parties to provide additional information. One state party (Luxembourg) offered to provide the CESC with additional information on its own initiative. Leckie, *supra* note 84, at 560.

⁸⁹ *Manual*, *supra* note 82, at 73.

nant. Instead, the CESCER adopts a cooperation model, attempting to foster an encouraging atmosphere where states parties work with each other and with the CESCER to insure protection of human rights internationally.⁹⁰

B. *The Effectiveness of the CESCER*

As an expert body of ECOSOC, the CESCER is powerless to enforce compliance with the Economic Covenant directly.⁹¹ The drafters of the Economic Covenant could have created a more demanding enforcement regime.⁹² For example, the Economic Covenant could have provided for a mechanism to receive petitions or complaints from states parties or individuals.⁹³ The Economic Covenant also could have expressly permitted the CESCER to issue or ask the United Nations to issue resolutions criticizing a state party.⁹⁴

Proponents of the cooperation model, however, maintain that the present CESCER effectively promotes social and economic rights.⁹⁵ Although a great deal of information upon which CESCER relies comes from states' reports submitted to the body of independent

⁹⁰ See *id.*; Philip Alston, *U.S. Ratification of the Covenant on Economic, Social and Cultural Rights: the Need for an Entirely New Strategy*, 84 AM. J. INT'L L. 365, 370 (1990).

⁹¹ Alfred de Zayas, *The Potential for the United States Joining the Covenant Family*, 20 GA. J. INT'L & COMP. L. 299, 307 (1990).

The [CESCER] possesses limited powers of coercion aimed at encouraging states parties to fully comply with their obligations under the Covenant. It cannot make binding judgements nor offer its "views" as is the practice of the Human Rights Committee. The [CESCER's] concluding observations represent the essence of its overall determination of whether a state party is fully complying. As such, requests for additional information constitute . . . a signal to states parties that their performances before the [CESCER] were incomplete and that the [CESCER] is dissatisfied. . . .

Leckie, *supra* note 84, at 560-61.

⁹² See Alston, *supra* note 85, at 355.

⁹³ *Id.* A right to individual access is available under the Civil and Political Covenant. Optional Protocol to the International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, art. 2, 999 U.N.T.S. 302 (entered into force Mar. 23, 1976).

⁹⁴ See Alston, *supra* note 85, at 355. While ECOSOC may recommend measures to enforce the Economic Covenant, it has not often, if at all, exercised any of its options under the implementation provisions. *Id.* at 342.

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies . . . any matter arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding . . . on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Economic Covenant, *supra* note 12, art. 22.

⁹⁵ de Zayas, *supra* note 91, at 300.

experts,⁹⁶ the CESCR also looks to other sources of information to insure accuracy and meaningful evaluation.⁹⁷ The CESCR encourages states parties to utilize information from NGOs to prepare their reports,⁹⁸ and the CESCR itself, during its review of the reports as well as during one-day "general discussions,"⁹⁹ may discuss materials from U.N., governmental, or NGO sources.¹⁰⁰ These methods strengthen the avenues of communication with states parties, and encourage cooperation. They do, however, include a threat of publicity for poor human rights records.¹⁰¹

Thus, the CESCR relies upon a cooperation model whereby it looks primarily to states parties to assess the status of economic, social, and cultural rights in the world. The CESCR has expanded upon a pure cooperation model, however, by encouraging both states parties and members of the CESCR to look beyond the traditional sources of information when preparing and examining the reports.¹⁰² This expansion has not been extremely effective, however, and critics have referred to the Economic Covenant as the "ultimate toothless tiger."¹⁰³ To determine whether the Child Convention will

⁹⁶ Alston, *supra* note 85, at 355; *Summary Record of the 1st Meeting*, Committee on Economic, Social and Cultural Rights, 4th Sess., Agenda Item 26, at 5, U.N. Doc. E/C.12/1990/SR.1 (1990); *Rules*, *supra* note 87, at Rule 9.

⁹⁷ See Alston & Simma, *supra* note 77, at 612.

⁹⁸ *Id.* at 610.

⁹⁹ The CESCR holds "in-depth discussions" focusing on specific rights or articles of the Economic Covenant. *Id.* at 606.

¹⁰⁰ The CESCR was the first UN treaty-monitoring body able to receive data and suggestions from NGOs. *Id.* at 612 n.42 (citing ESC Res. 1987/5 para. 6 (May 26, 1987)). In its fifth session, the CESCR decided to expand the role of outside sources by asking "all concerned bodies and individuals to submit relevant and appropriate documentation" on states parties' reports. Leckie, *supra* note 84, at 566 (citing U.N. ESCOR C.12 Supp. (No. 3) para. 280, U.N. Doc. E/C.12/1990/8 (1991)).

¹⁰¹ de Zayas, *supra* note 91, at 308. In 1991, the CESCR proposed that representatives of the various human rights supervisory bodies assemble to "study matters of common concern." *14th Meeting*, *supra* note 74, at 8, 13. The CESCR also suggested designating someone to follow the work of other supervisory bodies and to meet in working groups to encourage dialogue. *Id.*; see Leckie, *supra* note 84, at 548.

¹⁰² Leckie, *supra* note 84, at 566. The measures the CESCR undertook at its fifth session "should enhance the efficiency and overall quality of the Committee's work by allowing any person anywhere to submit relevant information directly to the Committee for its use in examining states reports and in assessing compliance with the obligations assumed under the Covenant." *Id.*

¹⁰³ Alston, *supra* note 90, at 366. Even if critics have recently become more hopeful about the CESCR due to improved procedures, one commentator has noted that as long as there is no mechanism for receiving individual complaints of violations of economic, social, and cultural rights, "attention to the work of the [CESCR] will remain inadequate." See Leckie, *supra* note 84, at 565-66. Consequently, all CESCR members agreed during their fifth session

be more successful, it is necessary to examine the modifications the CRC has introduced to the traditional human rights system.

III. THE COMMITTEE ON THE RIGHTS OF THE CHILD

The drafters of the Child Convention relied to a great extent on the CESCER model when they created the CRC.¹⁰⁴ The CRC's rules of procedure reflect the standards of the CESCER as they stood when the CRC originated. In many ways the composition¹⁰⁵ and duties of the two committees are identical.

During the drafting of the Child Convention, negotiators had to decide whether to set high standards and risk having few ratifications, or to include lower but more realistic standards to encourage more states to become parties.¹⁰⁶ They chose the latter alternative and relied on prior instruments in creating the Child Convention and the CRC.¹⁰⁷ Thus, although the CRC benefits from the experience of the Economic Covenant, it also incorporates many of its deficiencies.¹⁰⁸

to undertake the drafting of an optional protocol, such as the one that exists under the International Covenant on Civil and Political Rights (Civil and Political Covenant), providing for applications or petitions to address violations of individual rights. *Id.*

¹⁰⁴Holmes, *supra* note 13, at 176. During the drafting process, it was suggested that the drafters consider an alternative method of implementation, rather than establish another committee that would rely upon the traditional reporting system. Because the drafters were not presented with any specific alternatives, they established the standard independent expert committee. *Id.* Thus, the CRC emulates existing human rights supervisory bodies in that a human rights treaty created it, independent experts serve on it, and its main function is to review reports in order to evaluate states parties' efforts to comply with Child Convention standards. Dan O'Donnell, *The Committee on the Rights of the Child: A New UN Treaty Monitoring Body: Two steps forward . . . one step backward?*, 8 INT'L CHILDREN'S RTS. MONITOR 4, 4 (1991).

¹⁰⁵Eighteen independent experts make up the CESCER. *Rules*, *supra* note 87, at Rule 9. Ten experts of "high moral standing and recognized competence" comprise the CRC. Child Convention, *supra* note 7, art. 43(2). On February 27, 1991, the states parties to the Convention on the Rights of the Child met in New York to elect the CRC's ten members. *Status of the Convention on the Rights of the Child, Note by the Secretary-General*, Convention on the Rights of the Child, 1st mtg., Agenda Item 4, at 1, U.N. Doc. CRC/SP/4 (1991). The small size of the CRC could be problematic because the CRC will meet for only a few weeks each year and must examine many more reports, encompassing a wider scope of rights, than other human rights bodies. O'Donnell, *supra* note 104, at 5.

¹⁰⁶Johnson, *supra* note 6, at 168. "The review of periodic reports . . . may seem like a weak mechanism for promoting human rights, and indeed . . . it is one of the weaker ones. However, it is precisely for this reason that it is acceptable to a large number of states." O'Donnell, *supra* note 104, at 5.

¹⁰⁷Cohen, *supra* note 6, at 1452; *see also* Holmes, *supra* note 13, at 176; Johnson, *supra* note 6, at 168.

¹⁰⁸Holmes, *supra* note 13, at 176. At its first session, the CRC supported the recommendation that the agenda of the 1993 World Conference on Human Rights focus on how to improve

The Child Convention incorporates many aspects of the CESCRC cooperation model. For example, the CRC relies on a periodic-reporting system.¹⁰⁹ The Child Convention instructs states parties to report on measures they have adopted to give effect to rights mentioned in the Convention and on the progress made towards full enjoyment of those rights.¹¹⁰ Following review of the reports, the CRC may make "suggestions and general recommendations."¹¹¹ The CRC will also follow the growing practice of issuing general comments which elaborate on the substance of rights contained in the Child Convention.¹¹² These comments could help clarify exactly what the Child Convention does and does not mandate.

At its first session, the CRC adopted reporting guidelines to aid states parties in preparing their reports,¹¹³ pursuant to article 44 of the Child Convention.¹¹⁴ Commentators have criticized the CRC for

the effectiveness of existing human rights treaty bodies. *Summary Record of the 26th Meeting*, Committee on the Rights of the Child, 1st sess., at 6, 8, U.N. Doc. CRC/C/1991/SR.26 (1992) [hereinafter *26th Meeting*].

¹⁰⁹ Child Convention, *supra* note 7, art. 44. Six other treaty bodies rely on the periodic reporting system, including: the Human Rights Committee; Committee on the Elimination of Racial Discrimination; Committee on Economic, Social and Cultural Rights; Committee Against Torture; Committee on Apartheid; and Committee on the Elimination of Discrimination Against Women. Barsh, *supra* note 43, at 152 n.52. According to article 44(1) (a) and (b), the first of these reports is due within two years of the entry into force for the State Party and every five years thereafter. Child Convention, *supra* note 7, art. 44.

¹¹⁰ Child Convention, *supra* note 7, art. 44. When a state party ratifies or accedes to the Child Convention, it must review national law to make sure it conforms with provisions of the Convention. THE RIGHTS OF THE CHILD, *supra* note 1, at 4. Fifty-seven states parties' reports will come due during 1992 and 1993. *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Initial reports of States Parties due in 1992*, Note by the Secretary-General, Committee on the Rights of the Child, U.N. Doc. CRC/C/3 at 1. The CRC was to examine the Russian report, among others, during its third session in January 1993. U.N. *Committee to Discuss Russian Report on Children's Rights*, TASS, Jan. 21, 1993, available in LEXIS, Nexis Library, Intl File.

¹¹¹ Child Convention, *supra* note 7, art. 45(d).

¹¹² The CRC will generate general comments "with a view to promoting a better understanding and a further implementation of the Convention and assisting States in fulfilling their reporting obligations." Pais, *supra* note 8, at 40; see Leckie, *supra* note 84, at 547, 562-63 (discussing the CESCRC's recent General Comments on the "Nature of States Parties Obligations," "Reporting by States Parties," and "International technical assistance measures.")

¹¹³ See generally *Matters Relating to the Committee's Methods of Work in Respect of the Consideration of Reports to be Submitted by States Parties in Accordance with Article 44 of the Convention*, Note by the Secretary-General, Committee on the Rights of the Child, 1st sess., U.N. Doc. CRC/C/L.2 (1991); see Pais, *supra* note 8, at 41; O'Donnell, *supra* note 104, at 7.

¹¹⁴ Article 44(2) provides: "Reports . . . shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention. . . ." Child Convention, *supra* note 7, art. 44.

failing to provide states parties with clearer guidelines, however.¹¹⁵ Two types of guidelines exist—those which describe generally what information states parties should provide, and those which provide a specific checklist for states parties to follow.¹¹⁶ The CRC chose the former, leaving states parties with unlimited discretion on what information to include in their reports.¹¹⁷

The CRC, at its first session, also drafted its own rules of procedure, with several innovations aimed at enlarging the resources available to the CRC in its monitoring capacity.¹¹⁸ First, the CRC may look to more than a state party's report in assessing the true status of children's rights within a state.¹¹⁹ For instance, Rule 34 invites representatives of those bodies listed in article 45 to act as "observers."¹²⁰ This undefined, open-ended term apparently allows a great deal of input from whomever qualifies as a "competent body." In addition, under Rule 76, the CRC may now commission studies directly, without having to go through the General Assembly.¹²¹ The Child Convention thus includes a specific role for the United Nations Children's Fund (UNICEF) and NGOs in the monitoring process.¹²² Second, in a move to encourage the promotion of children's rights nationally, reports are to be made public and distributed widely within each state.¹²³ Finally, the CRC will adopt "conclud-

¹¹⁵ O'Donnell, *supra* note 104, at 7 ("Unfortunately the Committee did not make an effort to study the experience of other bodies, nor was it provided with an opportunity to compare different kinds of reporting guidelines.").

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See Child Convention, *supra* note 7, art. 43(8); *Draft Provisional Rules of Procedure: Submitted by the Secretary-General, Committee on the Rights of the Child*, 1st sess., U.N. Doc. CRC/C/L.1 (1991) (as amended by the Committee) [hereinafter *Draft Provisional Rules*]; O'Donnell, *supra* note 104, at 5.

¹¹⁹ *Id.* art. 45(a).

The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions . . . as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and *other competent bodies* as it may consider appropriate to provide expert advice. . . .

Id. (emphasis added). Article 45(b) allows the CRC to refer states parties' requests for technical assistance to the entities listed in article 45(a). *Id.* art. 45(b).

¹²⁰ See *Draft Provisional Rules*, *supra* note 118, at Rule 34(2).

¹²¹ *Id.* at Rule 76.

¹²² O'Donnell, *supra* note 104, at 6 (stating that U.N. organs may participate in the preliminary review of states parties' reports).

¹²³ THE RIGHTS OF THE CHILD, *supra* note 1, at 5; Child Convention, *supra* note 7, art. 44(6).

ing observations" after it examines a state party's report in order to clarify for states parties the steps they must take in order to fully comply with the Child Convention.¹²⁴

Anticipating a backlog in the review of these reports, the CRC suggested during its first session that the General Assembly grant the resources to schedule additional meetings of the CRC throughout the year.¹²⁵ This proposal is currently pending before the General Assembly.¹²⁶ If approved, the effectiveness of the CRC in reviewing these reports would be greatly enhanced.

The CRC has thus shown a willingness to expand upon the cooperation model it inherited from the CESC. It has opened even further the avenues of communication between itself and states parties, and has recognized its responsibility in keeping up with the forthcoming reports.¹²⁷ It has also given NGOs an explicit role in the process of ensuring the rights of children.¹²⁸ Nonetheless, additional measures are warranted.

IV. IMPROVING THE EFFECTIVENESS OF THE CRC

An important question when assessing the effectiveness of the CRC seems to be whether international cooperation, rather than international confrontation, is desirable.¹²⁹ That human rights monitoring bodies have not been extremely effective causes one to question whether a more antagonistic approach would achieve the de-

¹²⁴ This practice could become somewhat controversial if and when the CRC acts on it because of the long-standing controversy in the human rights arena over whether "views referring to specific countries can be adopted, or whether dialogue with States Parties should remain inconclusive." See O'Donnell, *supra* note 104, at 5.

¹²⁵ *Id.* at 5-6; *Summary Record of the 22nd Meeting*, Committee on the Rights of the Child, 1st sess., at 8, U.N. Doc. CRC/C/1991/SR.22 (1992); *Draft Provisional Rules*, *supra* note 118, at Rule 2.

¹²⁶ Defence for Children International, *The Committee on the Rights of the Child, 'Open-minded', 'hopeful' and . . . 'different'.*, INT'L CHILDREN'S RTS. MONITOR, 10, 12 (1991) (interviews by Michèle Vignard); see Child Convention, *supra* note 7, art. 43(10). One possible reason for rejecting the proposal for additional sessions is that funding for the second session would have to come from the general U.N. budget. Roger S. Clark & Felice D. Gaer, *The Convention on the Rights of the Child: Who Pays?*, 7 N.Y.L. SCH. J. HUM. RTS. 123, 123 (1989).

¹²⁷ See generally *Draft Provisional Rules*, *supra* note 118.

¹²⁸ O'Donnell, *supra* note 104, at 6-7; Cohen, *supra* note 28, at 166; Cohen, *supra* note 51, at 145; see *supra* notes 119-122.

¹²⁹ See Chen, *supra* note 29, at 160 "The draft Convention is rather weak; the emphasis is on cooperation rather than confrontation. It relies on a reporting system It does not contain state-to-state complaint and individual petition systems, characteristic of many of the international human rights instruments." *Id.*

sired results.¹³⁰ It is worthwhile, therefore, to examine whether the premise currently underlying the human rights enforcement system can be improved, or whether it must be abandoned in order to fully promote children's rights.

There appear to be three possible alternatives. First, the Child Convention could follow a pure cooperation model, where the effectiveness of the CRC depends on the goodwill of each state to cooperate with the CRC¹³¹ and to reveal even the most damaging information in the name of children's rights.¹³² Second, the CRC could abandon a cooperation model and instead assume an adversarial role, imposing stricter reporting standards upon states parties, or perhaps discontinuing the use of states parties' reports altogether.¹³³ Third, the CRC could follow a middle path, taking into account criticisms of the cooperation model, but understanding that an adversarial approach would likely undermine the Convention.

A. Possible Models for an Enforcement Body

Proponents of the Child Convention believe that it would be highly inappropriate and ineffective to adopt a court-like enforcement approach.¹³⁴ The proper role of the CRC is to encourage, not

¹³⁰ One commentator has recommended that the CESCR "not over-emphasize its practice of carrying out a 'constructive dialogue' with states parties. It should aim to eventually act more like a court than a diplomatic entity." See Leckie, *supra* note 84, at 570.

¹³¹ Many see such flexibility as a goal under the Child Convention. Indeed, this approach has allowed states with opposing viewpoints to agree on the language of controversial Convention provisions. Holmes, *supra* note 13, at 180; Johnson, *supra* note 6, at 182. The ability to compromise is evident in the discussion about articles 1 (when childhood begins) and 38 (lowest possible age for a child to be in the military). See *supra* notes 32–57 and accompanying text. Others argue that compromises do not strengthen the Child Convention at all; rather, they weaken the force of the treaty. Barsh, *supra* note 43, at 143.

¹³² This is similar to a hypothetical society which lacks a police authority and requires each citizen to report on what measures she has taken to comply with society's rules. Balton, *supra* note 60, at 129; see also *Manual*, *supra* note 82, at iii; Alston & Simma, *supra* note 77, at 609 (citing Economic Covenant, *supra* note 12, arts. 16(1), 17(2)).

¹³³ Cf. Balton, *supra* note 60, at 126–27. The alternative methods monitoring bodies use to enforce human rights instruments include: 1) Education; 2) Fact-finding; 3) Conciliation; 4) Complaint procedures; and 5) Coercion. *Id.*

In ratifying the Convention, states parties made a commitment towards one another and if that commitment was not honoured, they could have recourse to the whole arsenal of remedies provided within [the] international framework (arbitration, bringing suit in the International Court of Justice, etc.) No State was likely to go that far, however. . . .)

14th Meeting, *supra* note 74, at 2.

¹³⁴ Alston, *supra* note 85, at 359 "It would be neither appropriate nor productive for [a committee] to resort to outright condemnation of the government concerned—an approach

compel, compliance with the Child Convention.¹³⁵ A court-like approach would alienate states parties, or prevent them from ratifying the Child Convention in the first place.¹³⁶

At present, few governments would endorse the creation of a standing body with the power to adjudicate complaints. Indeed, this could well become a deterrent for the ratification of, or accession to, a number of human rights instruments by states investigating this possibility. While a standing body without the power to adopt *binding* decisions might conceivably be a justifiable step in a time of increased efforts for the international protection of human rights, the political implications of accepting a powerful U.N. human rights judiciary remain too daunting for many governments seriously to envisage steps in this direction now.¹³⁷

In addition, radical alterations to the structure of the CRC and of the Child Convention itself might be necessary to bring about this type of system.¹³⁸ Although the Convention contains an amendment provision,¹³⁹ probably few states parties would be willing to abandon the work done during the drafting of the Child Convention over the past decade.¹⁴⁰

It is clear, however, that reliance on a pure cooperation model would be equally ineffective. "A monitoring system that depends entirely upon national reports is unavoidably deficient; without in

that it is ill-equipped to pursue effectively . . . and that could have a significant impact in deterring potential states parties from ratifying, or existing states parties from complying, with their obligations." *Id.*

¹³⁵ *Manual*, *supra* note 82, at 73; see Child Convention, *supra* note 7, art. 45(d).

¹³⁶ There is clearly a conflict between pressuring states to reveal damaging human rights records, and declining to impose an adversarial or confrontational monitoring system upon them for fear of alienating them. The only way to reconcile this is that the CRC would probably be more effective by getting more states parties to ratify the Child Convention and *then* pushing the cooperation model to its limits, than to abandon the model altogether and ask states to adhere to a model which potentially could be hostile and embarrassing to them.

¹³⁷ Markus G. Schmidt, *Individual Human Rights Complaints Procedures Based on United Nations Treaties and the Need for Reform*, 41 INT'L & COMP. L.Q. 645, 658 (1992).

¹³⁸ Child Convention, *supra* note 7, art. 45. Article 45 provides: "In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention . . . the [CRC] may make suggestions and general recommendations based on information received" from states parties, specialized agencies, UNICEF, and other U.N. bodies. *Id.*

¹³⁹ *Id.* art. 50.

¹⁴⁰ *But see supra* note 130 and accompanying text.

any way questioning the good faith of governments when presenting their reports, it is inevitable that they will see the position from a particular point of view."¹⁴¹ One commentator notes that there is an inherent tension between the CRC, whose duty is "to secure implementation of the Convention," and states parties, who generally resist change.¹⁴² The CRC must bear the tension in mind as it explores alternative mechanisms to insure that states *actually* comply.

The most realistic and efficient approach, therefore, has been to follow a modified version of the cooperation model. Maximizing the effectiveness of the monitoring procedure is essential in order to achieve full realization of children's rights.¹⁴³ To do this, the CRC needs timely and accurate information from states parties.¹⁴⁴ In addition, the CRC needs to seek out other reliable sources of information.¹⁴⁵ Third parties can provide objective views of state party compliance and can provide information to facilitate full and frank discussions on the status of children's rights. In sum, the CRC should focus its efforts on expanding the information base upon which it relies in its monitoring role in order to obtain a broader picture of the status of children's rights.

B. *Methods to Expand and Organize the Information Base*

In any modified system, states parties should continue to submit regular reports to the monitoring body.¹⁴⁶ States parties possess the most knowledge about the status of the rights of children within their borders.¹⁴⁷ Only through the active participation of states parties will the Child Convention succeed.

¹⁴¹ D.J. Harris, *A Fresh Impetus for the European Social Charter*, 41 INT'L & COMP. L.Q. 659, 671 (1992).

¹⁴² 14th Meeting, *supra* note 74, at 2. "The consideration of reports by states parties thus had to be seen as a process of *negotiation* and *not merely as an exchange of information*." *Id.* (emphasis added).

¹⁴³ Cf. Balton, *supra* note 60, at 126-27.

¹⁴⁴ Cf. *Limburg Principles*, *supra* note 87, at Principle 74.

¹⁴⁵ *Manual*, *supra* note 82, at 73. It does appear that the public debates over such "hot topics" as when childhood begins and minimum age for combat serve a greater public purpose of publicizing the issues. Per Miljeteig-Olssen, Commentary, *United Nations Convention on the Rights of the Child*, in PROCEEDINGS OF THE 83RD ANNUAL MEETING, *supra* note 6, at 177 ("[t]he preparation of this piece of international law has not been carried out within the closed circles of governmental experts, as is very often the case.").

¹⁴⁶ Nobody seems quite ready to abandon the periodic-reporting system altogether. See Holmes, *supra* note 13, at 176.

¹⁴⁷ During the first session of the CRC, members suggested holding annual informal meetings in different parts of the world to provide an opportunity for the members of the CRC to

A recurrent issue in the human rights area has been that states parties willing to submit reports are not always sure what information they need to include. The CRC attempted to address this problem during its first session by issuing reporting guidelines.¹⁴⁸ One commentator notes, however, that "the [CESCR], which initially used brief general reporting guidelines comparable to those adopted by the [CRC], later found it necessary to adopt more detailed specific guidelines, and it is possible that in time the [CRC] will arrive at the same conclusion."¹⁴⁹ For example, the CESCR recently requested additional information from five of the six states parties who presented reports during the CESCR's fifth session.¹⁵⁰ Because of the large number of states parties and the limited amount of time available to the CRC, the Committee cannot afford to ask states parties to return several times to supplement information provided in their reports.¹⁵¹ Thus, the CRC should carefully scrutinize the quality of its reporting guidelines,¹⁵² and should attempt to make them more comprehensive and specific.¹⁵³ Furthermore, the CRC should plan to hold general discussions which could lead to the adoption of general comments clarifying the substance of new or particularly controversial rights under the Child Convention.¹⁵⁴ Enhancing the reporting guidelines and promulgating general comments would give states parties a more accurate idea of exactly what the Child Convention requires, thereby improving the quality of the information base.

study the actual situation of children and discuss the situation with directors of public and private organizations in that region. In that light, a seminar met during the summer of 1992 in Latin America. See *14th Meeting*, *supra* note 74, at 11.

¹⁴⁸ See *supra* notes 113-117 and accompanying text.

¹⁴⁹ O'Donnell, *supra* note 104, at 7 (citations omitted).

¹⁵⁰ See *supra* note 88; Leckie, *supra* note 84, at 560.

¹⁵¹ The method of work of the CRC's pre-sessional working group may obviate this problem, however:

Prior to the session of the Committee, a Working Group will meet to review the reports of the States Parties which are scheduled for consideration. This practice has been adopted previously by other treaty monitoring bodies. The difference is that rather than simply reviewing the reports in order to prepare themselves for the "dialogue" with States Parties, the Working Group of the [CRC] will review the reports some months in advance, in order to give States Parties some notice prior to consideration of their report of additional information which the [CRC] would like to receive, or aspects of the report which need clarification.

O'Donnell, *supra* note 104, at 6.

¹⁵² See *id.* at 7.

¹⁵³ See *id.* For example, the CRC could clarify criteria for determining adequate standards of health care or quality of life. See *supra* notes 18, 20.

¹⁵⁴ See *supra* note 112.

An additional problem which affects the size and quality of the information base upon which the CRC relies is the propensity of states parties to make reservations when they ratify the Child Convention.¹⁵⁵ One human rights organization fears that "it may become impossible, because of countries excluding themselves from scrutiny, to get an honest picture of worldwide conditions."¹⁵⁶ For example, Burma submitted a reservation stating that the military would not be bound by article 37, which bans torture and capital punishment.¹⁵⁷ In addition, at least ten Islamic countries have reserved the right to restrict the freedom of religion and follow their own laws on adoption and nationality, in contravention of articles 7, 14, and 21.¹⁵⁸

The CRC could play a key role in preventing such reservations, perhaps, by encouraging states parties to compromise rather than making reservations.¹⁵⁹ By continuing to adopt a conciliatory stance towards states parties, the CRC may convince states parties that making reservations only weakens the strength of the Convention and unfairly shields the true status of children's rights. Clearly, the

¹⁵⁵ A reservation is "a formal declaration by a State becoming party to a treaty, specifying a certain condition on which its acceptance of the treaty is based." JAMES R. FOX, *DICTIONARY OF INTERNATIONAL & COMPARATIVE LAW* 379 (1992). The scope of the problem could have disastrous effects on the success of the CRC and the Child Convention.

A coalition of the world's top children's rights defenders says that in the two years since a bold-sounding United Nations treaty took effect, so many countries have exempted themselves from scrutiny that the entire exercise may break down. Thirty-six of 109 states that have either signed or ratified the 1989 [U.N.] Convention on the Rights of the Child have invoked their right to opt out of certain clauses. . . . [Defence for Children International warned] that the growing number of such "reservations" threatens to render the [U.N.] convention meaningless in parts of the world where its influence is most desperately needed.

Dave Todd, *Children's rights; Third of Signatories Back Away From Commitments to UN Pact*, *GAZETTE* (Montreal), Feb. 27, 1992, at A8, available in LEXIS, Nexis Library, Intl File.

¹⁵⁶ Todd, *supra* note 155, at A8.

¹⁵⁷ *Id.*

¹⁵⁸ See *id.* The frequency of reservations is not unique to the Child Convention. In 1991, 21.2 percent of the parties to the Economic Covenant had entered reservations (twenty states out of ninety-four), while 29.2 percent of the signatories to the Civil and Political Covenant had made reservations (twenty-six out of eighty-nine states parties). Belinda Clerk, *The Vienna Convention Reservations Regime and the Convention on Discrimination Against Women*, 85 AM. J. INT'L L. 281, 283 (1991).

¹⁵⁹ See *14th Meeting*, *supra* note 74, at 4-5. Members of the CRC have noted that the Child Convention does not limit the number or nature of reservations a state party may make, except that it must conform with the objectives of the Child Convention. Furthermore, the CRC is not empowered to opine on the validity of the reservations. *Id.* at 5.

more states parties who participate in open, cooperative reporting, the more accurate and broad the information base worldwide.

The CRC also needs to expand its use of supplemental sources of information to monitor state party compliance.¹⁶⁰ The most accepted outside sources of information are NGOs because they participated in the drafting of the Child Convention.¹⁶¹ NGOs also often have the opportunity to observe children's living conditions in a particular country more readily than does that country's government.¹⁶² The CRC could further formalize the role of NGOs in examining states parties' reports by setting standards which NGO-supplied information and data used by other organizations must meet in order to satisfy Child Convention requirements.¹⁶³ In addition, the CRC and the NGOs could together establish "indicators" which may be used to evaluate state party compliance.¹⁶⁴

The CRC should also utilize fully its powers under article 45 of the Child Convention and encourage "recognized experts" to provide oral testimony during general discussions. The CRC must have the freedom and the willingness to solicit information from virtually any person, group, or agency.¹⁶⁵ Broadening the information base to include active participation by objective sources can only enhance the enforcement of the Child Convention.

Finally, the CRC must open an avenue of communication between itself and the individuals who are most directly affected by this international effort—the children.¹⁶⁶ The absence of a procedure for receiving and reviewing children's individual complaints is a major weakness of the Child Convention.¹⁶⁷ For the CRC to monitor

¹⁶⁰ Cohen, *supra* note 51, at 137.

¹⁶¹ See *id.* at 142–43; cf. Leckie, *supra* note 84, at 567 (noting that many NGOs continue to ignore the CESCER).

¹⁶² Miljeteig-Olssen, *supra* note 67, at 151.

¹⁶³ O'Donnell, *supra* note 104, at 67. Questions needing to be resolved in this area include:

... the compatibility [of] data used by other organizations with the standards set forth in the Convention ... the identification of "indicators" which may be used to evaluate compliance ... the form in which information is supplied to the [CRC] and whether or not the other UN bodies will expand their information gathering efforts to take into account the requirements of the Convention and the [CRC] ...

Id.; see also Leckie, *supra* note 84, at 570.

¹⁶⁴ *Id.*; cf. Harris, *supra* note 141, at 670–71.

¹⁶⁵ See Leckie, *supra* note 84, at 570.

¹⁶⁶ See Cohen, *supra* note 6, at 1452.

¹⁶⁷ *Id.*; Schmidt, *supra* note 137, at 645; see O'Donnell, *supra* note 104, at 4–5 (noting that some treaty monitoring bodies may already receive complaints from individuals alleging violations).

effectively the rights of children in a state, it should listen to the children themselves.¹⁶⁸ Although the CRC should not put at risk the effort that went into the drafting, adoption, and ratification of the Child Convention, the Committee should seriously consider drafting an optional protocol such as the one the International Covenant on Civil and Political Rights (Civil and Political Covenant) utilizes.¹⁶⁹ The CESCR is currently in the process of drafting an optional protocol for the purpose of enforcing economic, social, and cultural rights.¹⁷⁰ An optional protocol allowing individuals to complain directly to the CRC would add a quasi-judicial quality to the CRC.¹⁷¹ If the CRC were to implement an optional protocol, it could also provide for follow up procedures such as those being used under the Civil and Political Covenant's Optional Protocol,¹⁷² thereby providing another safety net for the child whose rights have been violated.¹⁷³

In addition, establishing an International Ombudsman on the Rights of the Child would provide the CRC with another resource to tap for information on the true status of children's rights.¹⁷⁴ Creat-

¹⁶⁸ Gomien, *supra* note 9, at 172–73. States parties have a tendency to portray their situation in a favorable light. Balton, *supra* note 60, at 128. One commentator familiar with both the situation of children in Norway and the function of an ombudsman has suggested that an ombudsman would help to implement the U.N. Child Convention, but is not sure that the Norwegian model could be directly exported. Melton, *supra* note 73, at 251.

¹⁶⁹ See, e.g., Alfred M. de Zayas, *The Follow-Up Procedure of the UN Human Rights Committee*, 47 INT'L COMM'N JURISTS REV. 28, 28 (1991). The Civil and Political Covenant's supervisory body (the Human Rights Committee or HRC) currently relies on individual complaints to bring violations of civil and political rights to its attention. Although the Optional Protocol contains no enforcement mechanism, many states parties feel constrained by the moral weight of their ratifications and have honored the HRC's "Views" on the violations. de Zayas, *supra*, at 28. As of 1992, the HRC had received 500 communications alleging violations of the Civil and Political Covenant under the optional protocol. The HRC has determined that 134 communications alleged actual violations, while 140 were inadmissible. Seventy-three cases were discontinued and 150 are currently pending. Schmidt, *supra* note 137, at 646. Recently, the HRC took the additional step of implementing procedures to follow up on previous action taken against the violators of human rights. de Zayas, *supra*, at 31.

¹⁷⁰ Leckie, *supra* note 84, at 565–66.

¹⁷¹ *Id.*

¹⁷² See de Zayas, *supra* note 169, at 35.

¹⁷³ Schmidt, *supra* note 137, at 650; de Zayas, *supra* note 169, at 35.

¹⁷⁴ Melton, *supra* note 73, at 251, 253 ("as nations signal their commitment to children by joining as parties to the United Nations Convention on the Rights of the Child, they should consider establishment of an ombudsman for a [sic] children as a mechanism to assist in fulfillment of their obligations. . ."); 14th Meeting, *supra* note 74, at 2 (positing that the Centre for Human Rights could help strengthen institutions such as human rights committees or ombudsmen). But see O'Donnell, *supra* note 104, at 6 (suggesting that the CRC *itself* could serve as the ombudsman, rather than using an ombudsman independent of the CRC as a source of information).

ing such a post would not necessarily undermine the cooperation model because an ombudsman need not act as a prosecutor.¹⁷⁵ The Ombudsman could function simply as a children's spokesperson or representative,¹⁷⁶ resembling the Swedish or Norwegian Children's Ombudsman.¹⁷⁷ The international version of the Children's Ombudsman could serve as a general source of information and as a consultant.¹⁷⁸

An International Ombudsman familiar with the situation of children would be an invaluable source of information to the CRC. Thus far, children have been silent observers of a process that has a potentially remarkable effect on their lives.¹⁷⁹ Aided by an International Ombudsman, children would gain a larger degree of access to the rights and protections offered by the Child Convention. Significantly, the child's right to be heard would be realized.¹⁸⁰ Such an addition to the Child Convention would continue the trend of expanding the pool of resources and information available to the CRC, enabling it to gain a more realistic picture of the international status of children's rights.

Once the CRC receives information from the expanded information base, it must be able to effectively organize, access, and utilize the information it gathers. The risk of implementing procedures to expand the information pool is that the information could become unmanageable, detracting from the CRC's utility.¹⁸¹ First, the CRC could participate in a U.N.-wide attempt to computerize information received from states parties and human rights organizations.¹⁸²

¹⁷⁵ RÄDDA BARNEN, *supra* note 67, at 35.

¹⁷⁶ *Id.* at 24; see also Melton, *supra* note 73, at 202.

¹⁷⁷ Another model might be the U.S. guardian *ad litem*. See Monopoli, *supra* note 67, at 95.

¹⁷⁸ RÄDDA BARNEN, *supra* note 67, at 32. An ombudsman could serve many critical functions. Melton, *supra* note 73, at 251.

¹⁷⁹ Miljeteig-Olssen, *supra* note 145, at 177-78.

¹⁸⁰ Child Convention, *supra* note 7, art. 12.

¹⁸¹ Cynthia P. Cohen et al., *The UN Convention on the Rights of the Child: Developing an Informational Model to Computerize the Monitoring of Treaty Compliance*, 14 HUM. RTS. Q. 216, 219 (1992). "If only one count is used for each of the thirty-eight rights-protecting articles in the substantive section of the Convention . . . multiplied by the number of states parties scheduled to submit reports in 1992 . . . the [CRC] will immediately have 874 catalogues of information to evaluate." *Id.*

¹⁸² *Id.*; 26th Meeting, *supra* note 108, at 2; Summary Record of the 18th Meeting, Committee on the Rights of the Child, 1st sess., at 2, U.N. Doc. CRC/C/1991/SR.18 (1992) [hereinafter 18th Meeting]; 14th Meeting, *supra* note 74, at 10, 14. Computerization of information gathered through an expanded information base could eliminate redundant reports, particularly problematic in the context of the Child Convention because of the fact that the Convention cuts across several spheres of interests protected by other human rights treaties, such as the Economic Covenant and the Civil and Political Covenant. Eliminating the need for a state party to repeat information would reduce the time needed to prepare reports and could largely resolve the problem of late or incomplete reports.

Computerization would eliminate duplication of efforts of both states parties and monitoring bodies, as well as facilitate access to the information.¹⁸³ In addition, the information could be collected in a central location, such as a library.¹⁸⁴ Finally, the CRC could establish training programs and seminars to instruct individuals on how to access the information and incorporate it into their evaluation of a state party's compliance with the Child Convention.¹⁸⁵

C. *Suggested Modifications to the Supervisory Body Structure of the Child Convention*

The CRC currently has a membership of ten experts. Commentators have criticized the drafters of the Child Convention for failing to follow the lead of previous human rights instruments, which entrust their enforcement to larger bodies.¹⁸⁶ If the CRC is to enhance its effectiveness by expanding its information base, the CRC needs more members.¹⁸⁷ This is particularly true because of the large number of states parties and rights in the Convention.

In addition, the CRC could serve as a model for national CRCs responsible for ensuring that legislation on a national level is consistent with goals of the Child Convention.¹⁸⁸ National CRCs could initiate and lobby for legislation which promotes the interest of the child.¹⁸⁹ Once legislation is passed, national CRCs could engage in publicity campaigns to mandate its enforcement. The establishment of national CRCs could spawn regional CRCs to carry out the same functions on a local level—where the children would feel the effects

¹⁸³ O'Donnell, *supra* note 104, at 6.

¹⁸⁴ *26th Meeting*, *supra* note 108, at 2; *18th Meeting*, *supra* note 182, at 2; *14th Meeting*, *supra* note 74, at 10, 14.

¹⁸⁵ *14th Meeting*, *supra* note 74, at 2, 12.

¹⁸⁶ For example, the Economic Covenant entrusts enforcement responsibilities to ECOSOC, a large body of the General Assembly. *See supra* note 83. Even though ECOSOC delegates this responsibility to the CESCR, the CESCR is composed of eighteen experts, as opposed to the ten who comprise the CRC. *Cf. Rules*, *supra* note 87, at Rule 9; Child Convention, *supra* note 7, art. 43(2).

¹⁸⁷ O'Donnell, *supra* note 104, at 66 (noting that "there is already speculation that in the long run, it may prove necessary to amend the Convention to increase the number of Committee members."); *see also* Harris, *supra* note 141, at 664.

¹⁸⁸ Pais, *supra* note 8, at 40.

¹⁸⁹ While it is true that a state must ensure that its national legislation is consistent with the Child Convention at the time it ratifies the Child Convention, national CRCs could ensure that legislation *continues* to be consistent and could propose *new* legislation protecting children.

more quickly.¹⁹⁰ National and regional CRCs would also serve to expand the information base of the CRC.

As has been suggested before, the General Assembly should allocate more resources to the CRC to fund additional meetings during which the CRC reviews and evaluates the reports of states parties.¹⁹¹ Moreover, the United Nations should set up a specific fund to finance pre-sessional working groups for the purpose of preparing matters on the agenda, organizing reports, calling for overdue reports, and drafting working documents, such as reports to the General Assembly on states parties' compliance.¹⁹² The guaranteed funding of additional pre-sessional working groups would allow the CRC to function more effectively in the short amount of time during which it meets officially.¹⁹³

The U.N. General Assembly recognizes that the supervisory bodies operating under its umbrella have been somewhat ineffective. As a result, the 1993 World Conference on Human Rights (Conference), to convene in June 1993, will focus on the issue of how to improve the effectiveness of such bodies.¹⁹⁴ Incorporating suggestions which emerge from the Conference into the structure of the Child Convention would further legitimize the Convention and strengthen the position of the CRC in the international community.

CONCLUSION

Despite the numerous human rights instruments in existence today, human rights abuses continue. In particular, children

¹⁹⁰ Cohen & Miljeteig-Olssen, *supra* note 62, at 380. In fact, on November 21, 1989, following the General Assembly's adoption of the Child Convention, New York City

affirmed its support of the Convention and further resolved . . . that all city agencies ensure that their activities comply with the Convention.

We, therefore, have an almost unprecedented situation: a major human rights treaty which the [United States] has not even signed, is, for all intents and purposes, the law at the level at which it counts the most.

Stephen P. Marks, *Children and Human Rights in the 1990s*, in *CHILDREN'S RIGHTS: CRISIS AND CHALLENGE*, A-12, A-16 (Dennis Nurkse & Kay Castelle eds., 1990).

¹⁹¹ Pais, *supra* note 8, at 40; see *supra* note 125 and accompanying text.

¹⁹² Article 44 of the Child Convention requires the CRC to submit reports on its activities to the General Assembly through ECOSOC. Child Convention, *supra* note 7, art. 44.

¹⁹³ Cf. Leckie, *supra* note 84, at 548 (noting that although the CESCR intended to examine eleven reports during its fifth session, it only reviewed six); Schmidt, *supra* note 137, at 648 (4-5 year delay).

¹⁹⁴ G.A. Res. 45/155, U.N. GAOR, 45th Sess., Agenda Item 12, at 2, U.N. Doc. A/RES/45/155 (1991); see also *Summary Record of the 24th Meeting*, Committee on the Rights of the Child, 1st sess., at 2, CRC/C/1991/SR.24 (1992).

throughout the world face the horrors of hunger, disease, poverty, homelessness, and abuse on a daily basis. As citizens, parents, and future beneficiaries of what today's children will accomplish, adults today must actively seek to provide children with the best environment in which to grow. Human rights treaties are only as effective as individuals, states parties, NGOs, and intergovernmental organizations choose to make them, however, and there are clearly reasons to search for new methods of implementation.

The structure of the Child Convention is not so different from that of the Economic Covenant as to be completely immune from the slow progress of the Economic Covenant. Any attempt to ameliorate the efficiency of the supervisory body under the Child Convention should not focus on changing the model upon which the CRC is based, however. By adhering to a cooperation model, the CRC has succeeded in the three years of its existence in attracting more states parties into its regime than many of the other human rights treaty monitoring bodies have in decades. Still, many agree that better implementation is needed.

While it may not be realistic to expect the CRC to implement every innovation immediately, the Child Convention could be on its way to becoming the standard-setting body in the human rights arena. To encourage states to actually, and not just superficially, comply with another human rights treaty, and to facilitate accurate review of the status of children's rights worldwide, the CRC should seek to expand the pool of resources upon which it relies. In addition, the CRC should improve individual access to the system, while not altogether abandoning the cooperation model. Finally, although embarrassing states parties who do not fully comply with the Child Convention is not one of the CRC's goals, perhaps the best way to bring about universal protection of children's rights is to do precisely that—publicize the names and acts in violation of the Child Convention of states that have refused to ratify, because no state should expect to escape international exposure and criticism if it disregards human rights. These mechanisms could ensure that the rights of the child will be realized to a degree seen in no other area of human rights.

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